

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Hutchinson	Team: Team # 1	CCRB Case #: 200816489	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/08/2008 11:50 PM	Location of Incident: 301 West 150th Street	Precinct: 32	18 Mo. SOL 5/8/2010	EO SOL 5/8/2010	
Date/Time CV Reported Tue, 11/11/2008 11:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/14/2008 11:17 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Greco	27356	944072	MN IRT
2. SGT Howard Zweben	03711	933512	032 PCT
3. POM Michael Urbanek	22802	943903	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Greco	Discourtesy: PO Brian Greco spoke obscenely and/or rudely to § 87(2)(b)	
B.SGT Howard Zweben	Abuse: Sgt. Howard Zweben stopped § 87(2)(b)	
C.POM Michael Urbanek	Discourtesy: PO Michael Urbanek spoke obscenely and/or rudely to § 87(2)(b)	
D.SGT Howard Zweben	Abuse: Sgt. Howard Zweben authorized the frisk of § 87(2)(b)	
E.SGT Howard Zweben	Abuse: Sgt. Howard Zweben authorized the search of § 87(2)(b)	

## Synopsis

On November 12, 2008, § 87(2)(b) a resident of § 87(2)(b) in the Bronx, called the NYPD headquarters to file the following complaint. PO John Schupp of Patrol Borough Manhattan North called the NYPD Internal Affairs Bureau on behalf of § 87(2)(b) and the complaint was assigned log number 08-51986. On November 14, 2008, § 87(2)(b)'s complaint was referred to the CCRB.

On November 8, 2008, § 87(2)(b) was walking on West 150<sup>th</sup> Street, between Bradhurst Avenue and Frederick Douglass Boulevard in Manhattan, when a marked police van, number 5361, pulled up alongside him. The driver of the van, identified as PO Brian Greco of the Patrol Borough Manhattan North Impact Response Team, allegedly said to § 87(2)(b) "Yo, come here." When § 87(2)(b) did not respond, PO Greco allegedly said, "You heard me, smartass, come here" [**Allegation A**]. When § 87(2)(b) continued walking, PO Greco allegedly got out of the van and told § 87(2)(b) to put his hands against the wall of a nearby building [**Allegation B**]. The officer who had been sitting in the front passenger seat of the van, identified as PO Michael Urbanek of the Patrol Borough Manhattan North Impact Response Team, allegedly said, "Oh, you want to be a smartass" [**Allegation C**]. PO Urbanek and the officer who had been riding in the middle row of seats in the van, identified as Sgt. Howard Zweben of the 32<sup>nd</sup> Precinct, allegedly frisked § 87(2)(b) [**Allegation D**], and all three officers allegedly searched inside his pockets [**Allegation E**]. § 87(2)(b) handed his identification to PO Greco, who went back to the van to run a warrant check on § 87(2)(b). When PO Greco returned, he issued § 87(2)(b) a summons for disorderly conduct.

§ 87(2)(b)'s complaint was eligible for mediation but on November 26, 2008, he called the undersigned investigator and declared his desire to proceed with an investigation. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

## Summary of Complaint

§ 87(2)(b) was contacted by the investigator on November 21, 2008 and provided a brief statement (encl. 7b). On December 2, 2008, § 87(2)(b) was interviewed at the CCRB (encl. 8a-8c). § 87(2)(b) is a § 87(2)(b). At the time of this interview, § 87(2)(b) was residing at § 87(2)(b) in the Bronx. His statement is consistent with his initial complaint narrative.

On November 8, 2008, at approximately 11:25 pm, § 87(2)(b) was walking from a barbershop on West 145<sup>th</sup> Street, between Broadway and Amsterdam Avenue in Manhattan, to the residence of his aunt, § 87(2)(b). At the time, § 87(2)(b) was wearing black jeans, black sneakers, a black hooded sweatshirt with the hood down, and a baseball cap. § 87(2)(b) stopped at the bar next to the barbershop, also located on West 145<sup>th</sup> Street between Broadway and Amsterdam Avenue, where he consumed two alcoholic drinks. He then purchased a club soda at a bodega across the street, which he carried in a paper bag. He was walking eastbound on the sidewalk of West 150<sup>th</sup> Street, between Bradhurst Avenue and Frederick Douglass Boulevard, when a police van, number 1631 or 1361, containing three uniformed police officers from the Manhattan North Impact Response Team pulled up alongside him. When asked, § 87(2)(b) stated that he did not stop in any other building or establishment after buying the club soda in the bodega on West 145<sup>th</sup> Street.

The driver of the van was a white male uniformed police officer, with a shaved head and a mustache. He was approximately five feet, eleven inches tall, with a medium to large build, and was in his mid-thirties. The officer was later identified by the investigation as PO Michael Urbanek of the Manhattan North Impact Response Team. A uniformed officer, thought by § 87(2)(b) to be a sergeant and with "three upside-down chevrons" on his left sleeve, was sitting in the middle row of seats in the van. The sergeant was a white male uniformed officer, with dark hair and no facial hair. He was approximately five feet, eight inches tall, with a medium build, and was in his late twenties. The sergeant was later identified by the investigation as Sgt. Howard Zweben of the 32<sup>nd</sup> Precinct. PO Greco, identified by the signature on the summons that § 87(2)(b)

§ 87(2) later received and observed PO Greco writing, was sitting in the front passenger seat of the van. PO Greco was described as a white male uniformed police officer, approximately five feet, eleven inches tall, with a medium build, dark brown hair, and glasses. None of the officers was wearing a cap and all were riding in a white and blue van with “NYPD” and “Courtesy, Professionalism, Respect” written on the side. The van number § 87(2)(b) observed was written on the rear of the side of the van.

As the van pulled up alongside § 87(2)(b) on West 150<sup>th</sup> Street, PO Urbanek lowered his window and yelled to him, “You! Yo! Come here, come here.” § 87(2)(b) refused and proceeded to walk down the street. PO Urbanek said, “You heard me, smartass, come here.” § 87(2)(b) persisted in his refusal to approach the van, telling PO Urbanek that he should do his job. PO Urbanek said, “Oh, you wanna be a wiseass,” and parked the van on the north side of West 150<sup>th</sup> Street. The three officers jumped out of the van and the driver took the paper bag from § 87(2)(b) and pulled his soda out. PO Urbanek said, “Get against the wall,” and § 87(2)(b) complied, putting his hands on the wall next to the sidewalk. PO Greco said, “Oh you wanna go to jail, that’s what you wanna do. You wanna be a wiseass, you wanna go to jail.” § 87(2)(b) replied that he wanted PO Greco to do whatever his job entails. While he was against the wall, Sgt. Zweben repeatedly told § 87(2)(b) to, “Stop resisting.” § 87(2)(b) stated that he was not resisting the officers’ demands in any way.

All three officers patted the outside of § 87(2)(b)’s clothing and searched his pockets. PO Urbanek searched § 87(2)(b)’s right-hand side pockets, Sgt. Zweben his left pockets, and PO Greco searched his back pants pockets. PO Urbanek pulled a wad of money out of § 87(2)(b)’s right hip pocket and counted it. § 87(2)(b) was carrying between two-hundred-twenty-five and two-hundred-thirty dollars. § 87(2)(b) also had napkins in his left hip pocket, chap stick and change in his right hip pocket, a comb in his back left pocket, and his wallet in his back right pocket. His cell phone was clipped to his belt. PO Urbanek and PO Greco asked § 87(2)(b) where he worked approximately six times and § 87(2)(b) declined to answer each time. PO Greco asked for § 87(2)(b)’s driver’s license and § 87(2)(b) handed it to him from his wallet, which he had been carrying in his back pocket.

PO Greco walked to the van with § 87(2)(b)’s license while PO Urbanek and Sgt. Zweben stayed with § 87(2)(b) on the sidewalk. § 87(2)(b) observed PO Greco on the computer in the van but did not witness him in the act of writing a summons. While PO Greco was in the van, Sgt. Zweben said, “So where do you work?” § 87(2)(b) declined to answer and inquired whether he was under arrest. Sgt. Zweben said, “You just can’t do what we tell you,” to which § 87(2)(b) declined to reply. PO Greco returned from the van and handed § 87(2)(b) a summons for disorderly conduct, wrapped around his license, saying, “Here, wiseass, here, go keep drinking and do what you wanna do.” The three officers then got in the van and drove away. The entire interaction lasted approximately twenty-five minutes. After the officers had left the scene, several eighteen- to twenty-year-old individuals approached § 87(2)(b) and asked what had happened. § 87(2)(b) believes these individuals to be residents of the building on the corner of West 150<sup>th</sup> Street and Frederick Douglass Boulevard, on the north side of West 150<sup>th</sup> Street.

Immediately following the incident, § 87(2)(b) went to the PSA 6 stationhouse on Frederick Douglass Boulevard, between 146<sup>th</sup> Street and 147<sup>th</sup> Street to file a complaint. § 87(2)(b) did not specifically ask the desk sergeant to file a civilian complaint but inquired into the procedure for doing so. On Monday, November 10, 2008, § 87(2)(b) called NYPD headquarters at One Police Plaza and was informed that PO Greco works under the Manhattan North Impact Response Team.

Following his CCRB interview, § 87(2)(b) was presented with a **photo array** of officers that may have been present during the interaction (encl. 8g-8m). The photo array contained a photograph of PO Greco and five fillers of large, white male police officers with short hair. § 87(2)(b) stated that none of the photographs he was shown depicted officers who were present at the alleged incident.

### **Results of Investigation**

#### **Fieldwork**

On April 8, 2009, the undersigned investigator traveled to West 150<sup>th</sup> Street, between Bradhurst Avenue and Frederick Douglass Boulevard in Manhattan, to examine the buildings on the block (encl. 13a-13f).

There are four multi-story residential apartment buildings on the block, two on each side of the street. The two buildings on the south side of the street, 303 West 150<sup>th</sup> Street and 308 West 150<sup>th</sup> Street, as well as 301 West 150<sup>th</sup> Street, the building on the north side of West 150<sup>th</sup> Street, on the corner of Frederick Douglass Boulevard, are managed by the Harlem Congregation for Community Improvement. All three buildings have clearly posted no-trespassing signs, in English and in Spanish, facing West 150<sup>th</sup> Street.

The fourth building on the block, 305 West 150<sup>th</sup> Street, is on the corner of West 150<sup>th</sup> Street and Bradhurst Avenue, on the north side of West 150<sup>th</sup> Street. Based on the statements of § 87(2)(b) and the three officers interviewed, 305 West 150<sup>th</sup> Street exists as the only possible building that the officers could have observed § 87(2)(b) inside, as it is the only building on the block east of 301 West 150<sup>th</sup> Street. At the time of the canvass, the building was gutted and was undergoing substantial construction to the interior and exterior. The building was uninhabitable and the front door was padlocked with a heavy chain. Several Department of Buildings alteration permits were posted on the front of the building but it was not possible to determine for how long the building had been uninhabitable.

At the time of the canvass, the front door of 305 West 150<sup>th</sup> Street was constructed of heavy black metal which was solid on the bottom half of the door and comprised of a tight weave on the top half of the door. The only visibility into the building from the front door was through a small hole near the handle. One would not be able to see inside the building from a vantage point in the middle of the street.

A large white no-trespassing sign with black letters was posted on the front door of 305 West 150<sup>th</sup> Street. The sign identifies the building as subjected to the Manhattan District Attorney's no-trespassing program, under the management of the District Attorney's Community Affairs Unit. The sign informs passers-by that 305 West 150<sup>th</sup> Street "is for residents and guests only."

#### **Officer Statements**

**PO Brian Greco** of the Patrol Borough Manhattan North Impact Response Team was interviewed at the CCRB on December 23, 2008 (encl. 9a-9e). PO Greco is a § 87(2)(b)

§ 87(2)(b) He has a one-year tenure with the NYPD. On November 8, 2008, he worked from 5:30 pm to 2:05 am on November 9, 2008 on an impact response team within the confines of the 32<sup>nd</sup> Precinct, with PO Michael Urbanek and Sergeant Howard Zweben. All three officers were dressed in uniform and were assigned to the marked van, 5361.

The **memo book of PO Greco** (encl. 9b-9c) noted that on November 8, 2008, he was assigned to patrol the 32<sup>nd</sup> Precinct with PO Urbanek and Sgt. Zweben, in van number 5361. At 11:50 pm, PO Greco stopped § 87(2)(b) to ask what he was drinking out of the paper bag in his hand (in his statement, PO Greco did not repeat that he had observed § 87(2)(b) in the act of drinking out of the brown paper bag). PO Greco noted that, § 87(2)(b) began to yell and act disorderly. § 87(2)(b) said 'Get the fuck out of here. I am not showing you shit'." PO Greco noted that he issued § 87(2)(b) a summons for disorderly conduct, obscene language, § 87(2)(b) -7.

At approximately 11:45 pm, PO Greco was operating a marked van, 5361, with PO Urbanek in the front passenger seat and Sgt. Zweben in the middle row of seats, on West 150<sup>th</sup> Street in Manhattan. West 150<sup>th</sup> Street is a one-way street, eastbound. PO Greco noticed an individual, identified by the investigation as § 87(2)(b) in the vestibule of a building on West 150<sup>th</sup> Street, on the north side of the street, and decided to drive around the block. The investigation later determined that the building was 305 West 150<sup>th</sup> Street. § 87(2)(b) was inside the front doors of the building but was in the mailbox area, not yet through the inside set of doors. PO Greco stated that the building in which § 87(2)(b) was observed is a no-trespass building but was unable to elaborate on the classification of the building or how he obtained such information. PO Greco drove the van past the building two more times and on the third pass, saw § 87(2)(b) exiting the building. PO Greco stated that it is normal procedure to wait for an individual suspected of trespassing to exit the building before confronting them, since it is usually impossible for officers to enter through locked front doors. PO Greco stated that he assumed the front doors to 305 West 150<sup>th</sup> Street were locked. PO Greco called to § 87(2)(b) to come over to the van but § 87(2)(b) said, "I'm not stopping,

I'm not stopping." PO Greco stopped the van slightly east of the building, in front of 301 West 150<sup>th</sup> Street, and got out. PO Urbanek and Sgt. Zweben followed behind PO Greco.

As soon as he saw PO Greco exit the van, § 87(2)(b) began to walk away, eastbound on West 150<sup>th</sup> Street. PO Greco followed § 87(2)(b) for approximately five feet and said, "My man, come here a minute." PO Greco stated that it was his intention to see if § 87(2)(b) was a resident of the no-trespass building and to see what § 87(2)(b) was drinking, as he noticed a brown paper bag in his hand. In response to PO Greco's request, § 87(2)(b) turned and said, "Fuck you, I'm not doing anything," and continued to walk eastbound on West 150<sup>th</sup> Street. He claimed to know an individual who lived in the building on West 150<sup>th</sup> Street but stated that he could not get into the building. PO Greco asked § 87(2)(b) for identification and § 87(2)(b) said, "Get the fuck out of here, I'm not showing you shit."

PO Greco asked § 87(2)(b) if he lived in the building that he was seen exiting but § 87(2)(b) continued to curse and act in an irate manner, refusing to acknowledge PO Greco's questions. § 87(2)(b) did not provide the officers with any names of individuals who resided in the building. At some point during § 87(2)(b)'s interaction with the three officers on the sidewalk, § 87(2)(b) voluntarily provided PO Urbanek with his identification. § 87(2)(b) also pulled a glass bottle out of the paper bag in his hand to show the officers that it did not contain alcohol. PO Greco stated that § 87(2)(b) did not appear to be intoxicated. When § 87(2)(b) continued to curse and refuse to answer PO Greco's questions, Sgt. Zweben instructed PO Greco to write § 87(2)(b) a summons for disorderly conduct. PO Greco stated that § 87(2)(b) was cursing, screaming, and causing pedestrians in the street to take notice. Later in the interview, however, PO Greco stated that there were no civilians present on the block or in the lobby of the building § 87(2)(b) was seen exiting.

When PO Greco took § 87(2)(b)'s identification back to the van to run a warrant check, Sgt. Zweben and PO Urbanek remained with § 87(2)(b) who was leaning on a wall in front of 301 West 150<sup>th</sup> Street. § 87(2)(b) and the two officers were visible to PO Greco through the windshield and driver's window and were standing to the left and in front of the van. PO Greco did not recall whether PO Urbanek or Sgt. Zweben frisked § 87(2)(b) while the warrant check was being performed and stated that, since he was inside the van at the time, he most likely would not have been able to see either officer frisk § 87(2)(b). PO Greco did not see anything on § 87(2)(b)'s person that would indicate that he was carrying a weapon. When no open warrants were found for § 87(2)(b), PO Greco wrote a summons for disorderly conduct, obscene language. When PO Greco handed § 87(2)(b) the summons, § 87(2)(b) again became extremely angry and resumed cursing at the officers. PO Greco informed him that he was lucky that they were not charging him for trespassing.

**PO Michael Urbanek** of the Patrol Borough Manhattan North Impact Response Team was interviewed at the CCRB on January 5, 2009 (encl. 10a-10d). PO Urbanek is a § 87(2)(b). He has worked as an NYPD officer for two years. On November 8, 2008, PO Urbanek worked from 6:00 pm to 2:00 am on regular patrol for the Patrol Borough Manhattan North Impact Response Team, within the confines of the 32<sup>nd</sup> Precinct, with PO Brian Greco and Sgt. Howard Zweben. All three officers were dressed in uniform and were assigned to the marked van, 5361.

The **memo book of PO Urbanek** (encl. 10a-10b) noted that on November 8, 2008, PO Urbanek was assigned to van 5361 with PO Greco and Sgt. Zweben. At 11:50 pm, PO Urbanek stopped § 87(2)(b) in front of 301 West 150<sup>th</sup> Street. PO Urbanek noted, "Asked what he was drinking from brown paper bag. Began to yell at PO's. Was asked for ID, refused to ID himself. Continues to say, 'Get the fuck out of here, I'm not showing you shit.'" PO Urbanek noted that PO Greco issued § 87(2)(b) a summons for disorderly conduct at 11:54 pm.

At approximately 11:45 pm, PO Urbanek was riding in the passenger seat of the van in which PO Greco was the operator. Sgt. Zweben rode in the back of the van. PO Greco was driving on West 150<sup>th</sup> Street, between Bradhurst Avenue and Eighth Avenue in Manhattan, when the officers saw § 87(2)(b) in the hallway of a no-trespass building on the north side of the street, later identified by the investigation as 305 West 150<sup>th</sup> Street. PO Urbanek did not recall the particular designation given to the building but did recall

having information that indicated that the building was no-trespass. § 87(2)(b) was inside the front doors but was in the area where the intercom system is located, outside of the inner front doors of the building. PO Greco drove around the block twice and the officers observed § 87(2)(b) in the same area as they passed the building both times. Approximately ten minutes after the officers first observed § 87(2)(b) inside the building, § 87(2)(b) exited the building and PO Greco stopped the van on the side of the street next to where § 87(2)(b) was walking. PO Urbanek stated that the officers wanted to know if § 87(2)(b) was a resident of the building and that they wanted to see what he was drinking out of the brown paper bag in his hand. PO Urbanek stated that § 87(2)(b) did not appear to be intoxicated and did not recall whether he had seen § 87(2)(b) in the act of drinking out of the paper bag. PO Greco told § 87(2)(b) to “stop right there” because the officers wanted to ask him some questions. § 87(2)(b) replied that PO Greco should get out of the van if he wanted to talk to him. When PO Greco asked § 87(2)(b) to come over to the van, § 87(2)(b) began to curse at the officers, saying, “Get the fuck out of here.” At no point in the interaction did any officers respond to § 87(2)(b) s cursing with profanity.

When § 87(2)(b) refused to approach the van, PO Greco exited the vehicle and approached § 87(2)(b) followed by PO Urbanek and Sgt. Zweben. When the officers asked § 87(2)(b) for his identification, he said, “I’m not showing you shit.” The officers asked for § 87(2)(b) s identification several more times and one of the officers told him that he would be taken to the precinct stationhouse if he could not provide the officers with his identification. § 87(2)(b) asked if he was under arrest and an officer informed him that he was not, but could be taken to the stationhouse for identification. § 87(2)(b) eventually took his license out of his pocket and handed it to PO Urbanek. PO Urbanek stated that at the point when § 87(2)(b) was refusing to provide the officers with his identification, they had not yet determined that he would be issued a summons. PO Urbanek handed the license to PO Greco, who went to the van to run a warrant check on § 87(2)(b).

When PO Greco went to the van, PO Urbanek put § 87(2)(b) against a wall in front of 301 West 150<sup>th</sup> Street and frisked him. PO Urbanek frisked his arms, legs, back, and torso, front and back. There were no hard bulges apparent on § 87(2)(b) or any other indicators that he was carrying a weapon. PO Urbanek did not recall what clothes § 87(2)(b) was wearing. At no point did PO Urbanek search inside § 87(2)(b) s clothes or in his pockets. As PO Urbanek was frisking § 87(2)(b) Sgt. Zweben stood behind him as his backup, between PO Urbanek and the street. At no point did Sgt. Zweben put his hands on § 87(2)(b).

When PO Greco returned from the van, he stated that no open warrants were found for § 87(2)(b) and at that point, decided to issue § 87(2)(b) a summons for disorderly conduct, obscene language. § 87(2)(b) handed the paper bag to PO Urbanek, who pulled out a bottle that did not contain alcohol. PO Urbanek did not recall if PO Greco ever told § 87(2)(b) that he was acting like he wanted to be arrested. PO Urbanek did not recall if PO Greco ever called § 87(2)(b) a “smartass” or a “wiseass.” At no point during the interaction did any officer tell § 87(2)(b) to “stop resisting.”

**Sergeant Howard Zweben** of the 32<sup>nd</sup> Precinct was interviewed at the CCRB on January 16, 2009 (encl. 11a-11e). Sgt. Zweben is a § 87(2)(b). He is a five-year veteran of the NYPD. On November 8, 2008, he worked from 5:15 pm to 2:12 am, on regular patrol for the Manhattan North Impact Response Team, within the confines of the 32<sup>nd</sup> Precinct, with PO Brian Greco and PO Michael Urbanek. All three officers were dressed in uniform and were assigned to the marked van, 5361.

The **memo book of Sgt. Zweben** (encl. 11a-11c) noted that, on November 8, 2008, at 7:45 pm, he visited PO Greco and PO Urbanek. Sgt. Zweben arrived at the 30<sup>th</sup> Precinct stationhouse at 1:00 am on November 9, 2008.

At approximately 11:50 pm on November 8, 2008, Sergeant Zweben was riding in a van driven by PO Greco, with PO Urbanek riding in the front passenger seat, eastbound on West 150<sup>th</sup> Street in Manhattan, when the officers observed § 87(2)(b) standing in the front hallway of a building one or two lots west of 301 West 150<sup>th</sup> Street, later identified by the investigation as 305 West 150<sup>th</sup> Street. Sgt. Zweben stated that § 87(2)(b) was in the lobby of the building, fully inside the front doors. Sgt. Zweben stated that the

building was a no-trespass building but did not recall its designation. PO Greco drove around the block and returned to West 150<sup>th</sup> Street between Bradhurst Avenue and Eighth Avenue, where § 87(2)(b) was observed walking eastbound on the north side of West 150<sup>th</sup> Street with a brown paper bag in his hand.

PO Greco pulled up beside § 87(2)(b) and said, “Sir, stop, come over here.” Sgt. Zweben stated that since he had observed § 87(2)(b) inside a no-trespass building, there was a possibility that § 87(2)(b) was harboring motives of robbery. Sgt. Zweben also interpreted § 87(2)(b)’s timing of exiting the building after the police van passed as “sneaking away” and found the behavior to be suspicious. § 87(2)(b) said, “No, I don’t have to come over,” and started yelling profanities, such as “fuck you” and “fuck this.” PO Greco asked to see § 87(2)(b)’s identification and § 87(2)(b) refused. Sgt. Zweben then informed § 87(2)(b) that they would have to take him to the precinct stationhouse to obtain his information if he could not provide identification.

As § 87(2)(b) continued to curse at the officers, PO Urbanek asked him to put his hands on the wall behind him and he complied. The officers explained to § 87(2)(b) that they had to frisk him for their own safety. Sgt. Zweben stated that, considering § 87(2)(b)’s evasiveness and the possibility that he was considering burglary in the no-trespass building, there existed a reasonable suspicion that he was carrying a weapon. § 87(2)(b) did not protest to being frisked. As § 87(2)(b) turned toward the wall, he handed PO Urbanek his license. PO Urbanek frisked § 87(2)(b) while Sgt. Zweben stood behind him, between PO Urbanek and the street. PO Urbanek did not search inside § 87(2)(b)’s pockets and Sgt. Zweben did not observe any evidence that § 87(2)(b) was carrying a weapon. Sgt. Zweben did not recall what, if any, objects § 87(2)(b) was carrying on his person. While PO Urbanek was frisking § 87(2)(b) PO Greco took § 87(2)(b)’s license into the van to run a warrant check.

At an unknown point during the interaction, an officer asked § 87(2)(b) what was in the bag. § 87(2)(b) pulled a bottle out of the bag, which did not contain alcohol. At no point previous to § 87(2)(b) pulling the bottle out of the bag did any officer take the bag, search inside it, or pull the bottle out.

When PO Greco returned from the van and reported that no open warrants were found for § 87(2)(b) he stated that he would issue § 87(2)(b) a summons for disorderly conduct, obscene language. Sgt. Zweben stated that a trespassing summons could have been issued but that he told PO Greco that the disorderly conduct summons was sufficient, considering the circumstances. § 87(2)(b) informed the officers that he was going to file a complaint against them. PO Greco was angry that § 87(2)(b) indicated that he was going to file a complaint and said, “Go ahead and do that.” He informed § 87(2)(b) that he would still be issued a summons but did not curse at any time.

Sgt. Zweben stated that at no point did he suspect that § 87(2)(b) was intoxicated; however, based on his actions, there is a possibility that § 87(2)(b) was intoxicated. At no point did PO Greco tell § 87(2)(b) that he wanted to be arrested and at no point did any officers tell § 87(2)(b) to “stop resisting.” No officers called § 87(2)(b) a “smartass” or a “wiseass” at any point during the interaction.

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

#### **Officer CCRB History**

Sgt. Zweben has had no substantiated CCRB complaints filed during his five-year tenure with the NYPD (encl. 2a). PO Greco and PO Urbanek have also had no substantiated CCRB complaints filed during their two-year tenures with the NYPD (encl.3a-4a).

#### **Conclusions and Recommendations**

##### **Officer Identification**

PO Greco was identified from his signature and tax registry number on the summons he issued to § 87(2)(b) (encl. 9a). However, § 87(2)(b) identified PO Greco as the officer riding in the front passenger seat





§ 87(2)  
b) 8  
87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation A: Discourtesy: Word: PO Brian Greco spoke obscenely and/or rudely to § 87(2)(b)**

**Allegation C: Discourtesy: Word: PO Michael Urbanek spoke obscenely and/or rudely to § 87(2)(b)**

As discussed above, § 87(2)(b)'s allegations that both PO Greco and PO Urbanek called him a “smartass” and a “wiseass” on several occasions during their interaction on West 150<sup>th</sup> Street were not corroborated by any officer statements or police documents. § 87(2)(g)

**Allegation B: Abuse of Authority: Sgt. Howard Zweben authorized the stop of § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

In its decision on the case of *People v. De Bour*, the New York State Court of Appeals identified four levels of police intrusion and outlined the degree of suspicion necessary to justify each level of intrusion (encl. 1a). The third level of street encounters is identified by the right of a police officer to forcibly stop a civilian “when he reasonably suspects that such person is committing, has committed, or is about to commit either a felony or a misdemeanor,” as explicated in the Criminal Procedure Law of the State of New York.

§ 87(2)(b), § 87(2)(g)

As the NYPD’s legal guidelines pursuant to the Trespass Affidavit Program state in Section B(i), “If the officer has very little, but some basis for believing that the person is engaged, has engaged, or is about to engage in crime, the officer has only mere suspicion. At this level of suspicion, the officer may approach the person and ask questions. He may not use force nor in any way detain the person against his will...It should be understood that when an officer is not in the building, ...merely observing an individual entering and exiting the building, or simply exiting the building, is not enough to conduct a stop” (encl. 1n-1Ad). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

New York City Administrative Code §10-125, concerning the consumption of alcohol in public

places, states that, “no person shall drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container containing an alcoholic beverage in any public place...” (encl. 1d-1e). New York Criminal Procedure Law §140.10 requires that, to arrest an individual, an officer must have reasonable cause to believe that he or she has committed a crime, in the officer’s presence or otherwise (encl. 1b-1c).

In their statements, the officers interviewed did not describe seeing a bottle of alcohol inside the paper bag in § 87(2)(b) s hand, nor did they claim to see him drinking out of a container inside the bag. While the officers were observing § 87(2)(b) walking on West 150<sup>th</sup> Street, there was no indication that the paper bag in § 87(2)(b) s hand contained a bottle of any sort, and, by extension, whether any bottle that the bag may have contained was open. § 87(2)(b), § 87(2)(g)

Although the officers observed § 87(2)(b) carrying a brown paper bag, a vessel often used to conceal alcoholic beverages, they did not recall observing § 87(2)(b) in the act of drinking. PO Greco and PO Urbanek both noted in their memo books that they stopped § 87(2)(b) in order to ask him “what he was drinking” § 87(2)(b), § 87(2)(g)

**Allegation D: Abuse of Authority: Sgt. Howard Zweben authorized the frisk of § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

In his analysis of the legal guidelines dictating officers’ right to stop and frisk, Kamins notes an exception to the general rule that, in order to frisk an individual, an officer must suspect that the individual has committed a crime and that the individual is armed (encl. 1n). An officer is justified in frisking an individual if he suspects that the individual had the intention to commit a violent crime, such as robbery.

§ 87(2)(b), § 87(2)(g)

**Allegation E: Abuse of Authority: Sgt. Howard Zweben searched § 87(2)(b)**

Although § 87(2)(b) alleged that multiple officers entered his pockets and removed his property, including a large amount of cash, none of the officers supported his claim when interviewed. The only item of property that the officers recalled removing from § 87(2)(b) s person was his driver’s license, which all parties involved agreed was voluntarily provided to PO Greco by § 87(2)(b) § 87(2)(g)

Investigator:  
Jonathan Hutchinson

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: